IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8474 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

POPATLAL T SHAH SINCE DECEASED THRO HIS HEIRS

Versus

HARIJAN R MADHABHAI

Appearance:

1. Special Civil Application No. 8474 of 1988

MR NAGIN N GANDHI for Petitioner No. 1-2

..... for Respondent No. 1,2

RULE SERVED for Respondent No. 1/1,1/2,1/3-1/5,2/1-2/2

SERVED BY AFFIX.-(R) for Respondent No. 1/1/1-1/1/6, 1/2/2,1/2/4

RULE UNSERVED for Respondent No. 1/1/7,1/2/3

UNSERVED-EXPIRED (R) for Respondent No. 1/2/1

MR MUKTESH V PATEL for Respondent No. 1/6

MR JITENDRA M PATEL for Respondent No. 1/6

MR SP SEN, AGP for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/04/2002

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioners, two in number, have challenged the judgment and order dated 18.9.1987 (Annexure "C") passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A. 1368 of 1983 under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act" or "the Tenancy Act") dismissing the revision application of the petitioners and also the judgment and order dated 23.9.1988 (Annexure "D") passed by the Tribunal rejecting the petitioners' review application No. TEN.CA 32 of 1987 under Section 17 of the Bombay Revenue Tribunals Act, 1957.

2. The litigation between the parties has a chequered history.

2.1 The land in question is bearing survey No. 617/3 admeasuring Acre 1-23 Gunthas in village Malan in Palanpur Taluka of Banaskantha District. Originally the entire land bearing Survey No. 617 admeasuring Acres 25-28 Gunthas was jointly owned by three ladies - (i) Ghasura Sabatkhan Bajidkhan, (ii) Ghasura Kesharbai Radhankhan and (iii) Ghasura Subhanbai Hinayatkhan.

2.2 When the proceedings under Section 32G of the Tenancy Act were initiated by the Mamlatdar & ALT, Palanpur (hereinafter referred to as "the Mamlatdar" or "the ALT") in the year 1958, notices were issued to all the three ladies in respect of the claim of Gurjar Mava Hira and Gurjar Rata Madha. At the hearing before the ALT on 21.9.1958, all the parties remained present i.e. the two persons claiming to be tenants and the landladies. The ALT recorded the statements of the three landladies and recorded a finding that in view of the fact that all the three joint owners were widows, the tenants were not eligible to purchase the land on the tillers day and, therefore, the proceedings were required to be closed. The revenue record produced in the said proceedings did show that Rata Madha was a tenant cultivating Acres 8, 22/24 Gunthas of land in Survey No. 617 in the years 1956-57 and 1957-58.

2.3 Thereafter the ALT issued notices to the Talati of village Malan in November, 1971, June, 1972 and August, 1973 calling upon him to make enquiries whether the three joint owners of land bearing Survey No. 617 of village Malan were alive and if alive, whether they had remarried and if they were not alive, who were their legal heirs. This suo motu inquiry was obviously initiated in view of the fact that earlier the ALT had

already held that Rata Madha was a tenant of a part of the land in question, but because the landladies were widows, the tenant was not entitled to purchase the land as on the tillers day (1.4.1957). Accordingly when the notices were issued by the ALT, Rata Madha (father of respondent Nos. 1/1 to 1/6 herein) appeared before the ALT on the first date of hearing on 8.10.1973 and stated that he was a tenant of the land in question and was cultivating the same as a tenant. On that day, however, he prayed for time for the purpose of engaging an advocate. On the next date of hearing, i.e. on 2.11.1973, Subhanbai Hayatkhan, respondent No. 2 herein, appeared and stated that the land in question was partitioned and her share was Acres 8, 23 Gunthas and that she was getting the said parcel of land cultivated. She stated that she was getting the land cultivated through a tenant, but not through Rata Madha. She further disputed the entry in the revenue record that she had sold off the land for a sum of Rs.1500/- by a registered sale deed. The revenue record had shown the land in question admeasuring Acres 25, 28 gunthas was partitioned amongst the three landladies and the land in question admeasuring Acres 8, 23 Gunthas had gone to the share of respondent No.2-Subhanbai Hayatkhan as per entry No. 1279 dated 11.7.1963. Thereafter, even entry dated 8.11.1967 contained that petitioner No.1 herein Popatlal Tribhovandas Shah had purchased the land admeasuring Acres 8, 23 Gunthas from Subhanbai by registered sale deed dated 30.11.1666 for a sum of Rs.1500/-. In view of these entries, notice of the proceedings was also issued to Popatlal Tribhovandas Shah in May and June, 1974 and the notice dated 21.6.1974 was served upon Popatlal Tribhovandas Shah by RPAD and the acknowledgment was received by the son of Popatlal Tribhovandas Shah. However, petitioner No. 1 did not appear before the ALT.

2.4 Ultimately, the ALT rendered its decision dated 10.12.1974 (Annexure "A" to the petition) holding that Rata Madha was a tenant of the land in question admeasuring Acres 8, 23 Gunthas and he had been cultivating the same for the last 20 years and that Rata Madha was ready and willing to purchase the land. The ALT also accepted the case of Rata Madha that although the land was sold by Subhanbai (respondent No. 2 herein), to Popatlal Tribhovandas Shah (petitioner No. 1 herein), Rata Madha continued to cultivate the land. The ALT also gave a finding that petitioner No.1-Popatlal Tribhovandas Shah was residing at Surat and, therefore, also it was reasonable to believe that although Popatlal Tribhovandas Shah had become the owner of the land in question by virtue of the registered sale deed, Rata

Madha continued to remain the tenant of the land in question and that in any case Rata Madha was a tenant of the land in question as on 1.4.1957, but he was not declared as a deemed purchaser as on that date, as the landlady was a widow, but in view of the provisions of Section 32F of the Tenancy Act, the tenant became entitled to be declared as a deemed purchaser. The ALT, therefore, declared Rata Madha as the deemed purchaser for the land admeasuring Acres 8, 23 Gunthas being land bearing Survey No. 617/3. The purchase price was fixed by the said order.

2.5 Popatlal Tribhovandas Shah, petitioner No. 1 herein challenged the aforesaid order of the ALT before the Deputy Collector, Palanpur who remanded the matter to the Mamlatdar & ALT for issue of fresh notices to the parties and for giving decision afresh. Against that order, the Tribunal partly allowed revision application TEN.BA. No. 771 of 1983 by order dated 7.4.1983 directing the heirs of Subhanbai to be joined alongwith Popatlal Tribhovandas as co-respondents before the ALT and for hearing the matter afresh according to the merits of the case. The Special Civil Application filed by Rata Madha challenging the said order of the Tribunal was dismissed by this Court with an observation that the matter was sufficiently old and, therefore, be heard immediately.

2.6 The Deputy Collector thereafter conducted further proceedings and after hearing the parties, dismissed the appeal on 29.6.1983. Against such order of the Deputy Collector, Popatlal Tribhovandas filed Revision Application TEN.B.A No. 1368 of 1983. After hearing the learned advocates for the parties, the Tribunal dismissed the revision application by judgment and order dated 18.9.1987. Subsequently, Popatlal Tribhovandas Shah, petitioner No. 1 herein, who was also the sole petitioner before the Tribunal in the above revision application alongwith petitioner No. 2-Ramji Chelabhai Patel (claiming to have purchased the land in question from petitioner No. 1 on 7.7.1978) filed a review application. That review application came to be dismissed by the judgment and order dated 23.9.1988. Therefore, this Special Civil Application.

3. At the hearing of this petition, Mr NM Gandhi, learned counsel for the petitioners submits that the Tribunal erred in dismissing the revision application as well as the review application and seriously erred in not allowing the revision application although the requirements of Section 17 of the Bombay Revenue

Tribunals Act, 1957 were fully satisfied. The purchase of the land by Popatlal Tribhovandas Shah in 1966 was regularized by the Collector as per his order dated 5.6.1970 which was reflected in Entry No. 1560 dated 26.10.1970 and, therefore, Rata Madha had no right in respect of the land in question so as to justify initiation of any proceeding by the Mamlatdar in the year 1973 or 1974.

It is further submitted that the Tribunal erred in not permitting the petitioners to raise a contention that the land in question was a service tenure land belonging to the Government and consequently as the service lands are re-granted on new tenure basis, no tenancy can be created on these lands. It is submitted that this was a question of law which was required to be permitted by the Tribunal to be raised in the review proceedings.

Lastly, it was submitted that in any view of the matter, in the statement dated 25.9.1973, Rata Madha had made a clear statement that his name was wrongly entered as a tenant in the revenue record and he had never cultivated the land in question and that the landladies being widows, he was not interested in purchasing the land and his name may be cancelled.

4. On the other hand, Mr SP Sen, learned AGP for the authorities and Mr Muktesh V Patel, learned counsel for respondent No. 1/6 have opposed the petition and submitted that the Tribunal has given findings of fact on the questions arising under the provisions of the Tenancy Act and that they do not call for interference at the hands of this Court in the extraordinary writ jurisdiction under Article 227 of the Constitution.

5. As regards the contention that the purchase of the land in question by petitioner No.1-Popatlal Tribhovandas Shah from Subhanbai in the year 1966 was regularized by the Collector in 1970, the factum of sale is no disputed by the respondents and all the authorities have held that the rights which the tenant acquired for becoming deemed purchaser of the land in question could not have been defeated by such a sale transaction. No fault can be found with the said finding as the same is also fortified by the principles laid down by the Bombay High Court in Anna Babu Sul vs. Laxman Pandurang Tiwatne, 1998 (1) MLJ 614. It is pertinent to note that in 1966 when the said sale was effected, the rights of Rata Madha as a tenant to become deemed purchaser of the land in question were not lost. They were kept in

abeyance on account of the fact that the three landladies were widows when the proceedings were earlier initiated in the year 1958. Thereafter in 1971, 1972 and 1973, the Mamlatdar & ALT had called upon the Talati of the village to ascertain as to whether the widowed landladies were still alive. It was during the course of the said inquiry that it transpired that petitioner No.1-Popatlal Tribhovandas Shah had purchased the land from Subhanbai by a registered sale deed in the year 1966. In the course of the proceedings, Rata Madha, the tenant appeared and stated in October, 1973 that he had continued to cultivate the land for the last 20 years and the ALT also gave a finding that Rata Madha was the tenant of the land in question and he had been cultivating the land from 1.4.1957 onwards and that the purchaser-Popatlal Tribhovandas Shah was residing in Surat (the distance between Banaskantha and Surat being more than 300 kms.). No fault can be found with the finding given by the Mamlatdar & ALT that notwithstanding the sale of the land in question, Rata Madha continued to cultivate the land as a tenant.

6. As regards the contention that the Tribunal erred in not permitting the petitioners to raise the contention about the land being service land, it is pertinent to note that Popatlal Tribhovandas was a party to the proceedings right from 1973 onwards and it was always open to him to raise such a contention. Apart from the fact that he did not raise such a contention before the Mamlatdar & ALT or the Deputy Collector in appeal or before the Tribunal in revision which was dismissed in 1987, the fact that petitioner No. 1 has sold the land in question to petitioner No. 2 on 7.7.1978 was also not brought to the notice of any of the authorities in appeal or revision though the chequered history would show that the dispute between the parties was alive from 1973 onwards. The provisions of Section 17 of the Bombay Land Tribunal Act, 1957 under which the review application was filed are in pari materia with the provisions of Order 47, Rule 1 of the Code of Civil Procedure, 1908. No explanation has been offered by the petitioners as to why the contention in question was not raised before the Tribunal nor is any averment made about the exercise of due diligence, though the land being service tenure land was very much stated in all the relevant revenue entries including the entries in which the purchase of the land by Popatlal Tribhovandas as well as regularization of the said land by the Collector were reflected.

7. In any view of the matter, the learned counsel for the petitioners is not in a position to show as to

how any such sale of a service land can defeat the rights of the tenant who was cultivating the land as a tenant from 1.4.1957 onwards.

8. As regards the last contention that Rata Madha who was the tenant had himself given up his claim to the land in question and that he had stated that he was not in possession of the land in question, the contention cannot be accepted for more than one reason. The said contention was not raised at the hearing of the revision application which came to be dismissed by the judgment dated 18.9.1997. The so-called statement dated 25.9.1973, apart from the fact that it merely bears, as alleged, thumb impression of Rata Madha runs counter to the revenue record which was produced before the Mamlatdar & ALT as far back as in the year 1958 showing that Rata Madha was cultivating the land as a tenant in the year 1956-57 and also in 1957-58. A perusal of the said statement purporting to bear the thumb impression of Rata Madha and another tenant in respect of another parcel of land indicates that they were required to state that they had never cultivated the land in question and that their names were entered in the revenue record as tenants erroneously. It clearly appears to the Court that the said statement dated 25.9.1973 was procured by or at the instance of the purchaser of the land in question and that statement could not have been relied upon and was rightly not relied upon by the authorities below.

9. In view of the above discussion, the judgment and order of the Tribunal dismissing the revision application as well as the judgment and order dismissing the review application do not suffer from any infirmity whatsoever. There is no substance in any of the contentions raised by the petitioners. No other contentions were raised.

10. The petition is, therefore, dismissed. Rule is discharged. Ad-interim relief granted earlier on 1.5.1989 stands vacated.

11. The learned counsel for respondent No. 1/6 prays that in view of the dismissal of the petition, the petitioners may be directed to pay compensation/mesne profits to the heirs of Rata Madha.

Since consideration of this prayer would involve investigation into disputed questions of fact, this prayer is not entertained in the present proceedings but liberty is reserved to the heirs of Rata Madha to institute appropriate proceedings for this relief.

Record & Proceedings be sent back to the concerned forum immediately.

(M.S. Shah, J.)

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